STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 27, 2006
v	No. 260810 Wayne Circuit Court
JON ALLEN MORRIS, Defendant-Appellant.	LC No. 04-011264-01

Before: Bandstra, P.J., and Saad and Owens, JJ.

PER CURIAM.

Defendant appeals his conviction for unarmed robbery, MCL 750.530. The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, and sentenced him to 4 to 15 years in prison. We affirm.

I. Batson Challenge

Defendant says that the prosecutor violated his constitutional rights by engaging in a pattern of racially discriminatory use of peremptory challenges to dismiss potential African-American jurors in violation of *Batson v Kentucky*, 476 US 79; 106 S Ct 1712; 90 L Ed 2d 69 (1986). We disagree. This Court reviews de novo whether a trial court followed the procedures set forth in *Batson*. *People v Bell*, 473 Mich 275, 282; 702 NW2d 128 (2005). Further, "[w]e review for clear error a trial court's decision on the ultimate question of discriminatory intent under *Batson*." *Id.*

Batson established a three-step process to determine whether peremptory challenges were improperly exercised. *Bell, supra* at 282. The party opposing the challenge must first make a prima facie showing of discrimination by demonstrating that (1) the defendant is a member of a cognizable racial group; (2) peremptory challenges are being exercised to exclude members of a certain racial group from the jury pool; and (3) the circumstances raise an inference that the exclusion was based on race. *Id.* at 282-283, citing *Batson, supra* at 96.[1]

[1] Once that showing is made, the burden shifts to the challenging party to come forward with a neutral explanation for the challenge. *Bell, supra* at 283. "The neutral explanation must be (continued…)

Defendant's claim of error fails because the circumstances surrounding the prosecutor's peremptory challenges do not raise an inference that the exclusions were based on race. *Bell, supra* at 282. Though the prosecutor dismissed all three African-American veniremen, the court noted that for undisclosed reasons there were a low number of African-Americans in the jury pool, which resulted in an all Caucasian jury for defendant. Moreover, the prosecutor also excused two Caucasian veniremen. *Batson* does not stand for the proposition that the mere fact that an African-American defendant has an all Caucasian jury gives rise to the inference that African-American veniremen were excused on the basis of race. The court did not clearly err because the prosecutor, who also dismissed Caucasian veniremen, did not engage in a pattern of excusing veniremen based on race.

II. Sufficiency of Evidence

Defendant also contends that the prosecutor presented insufficient evidence that he committed unarmed robbery. This Court must view the evidence in a light most favorable to the prosecutor and determine whether a rational trier of fact could have found all of the elements of the offense proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).[2]

Due process requires that a prosecutor introduce evidence sufficient to justify a trier of fact in concluding that the defendant is guilty beyond a reasonable doubt. *People v Tombs*, 260 Mich App 201, 206-207; 679 NW2d 77 (2003). Circumstantial evidence and reasonable inferences based on that evidence may constitute sufficient evidence to find all the elements of an offense beyond a reasonable doubt. *Nowack, supra* at 400. This Court must grant the jury considerable deference, and it is for the trier of fact, not this Court, to determine what inferences can be fairly drawn from the evidence and to determine the weight to be accorded to the inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Questions of credibility should be left to the trier of fact to resolve. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999).

Unarmed robbery is defined by statute as follows:

> Any person who shall, by force and violence, or by assault or putting in fear, feloniously rob, steal and take from the person of another, or in his presence, any money or other property which may be the subject of larceny, such robber not

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(…continued)

related to the particular case being tried and must provide more than a general assertion in order to rebut the prima facie showing." *Id.* If the challenging party comes forward with a neutral explanation, the trial court must decide whether the opposing party has carried the burden of establishing purposeful discrimination. *Id.* The reasonableness and improbability of the explanation are considerations in that determination. *Id.*

[2] The standard for reviewing a claim of insufficient evidence is deferential and this Court must make all reasonable inferences and resolve credibility conflicts in favor of the jury verdict. *Id.*; *People v McFall*, 224 Mich App 403, 412; 569 NW2d 828 (1997). To the extent that defendant raises an issue of statutory construction, this Court reviews that question of law de novo. *People v Davis*, 468 Mich 77, 79; 658 NW2d 800 (2003).

> being armed with a dangerous weapon, shall be guilty of a felony . . . . [MCL 750.530.]

The elements of unarmed robbery are 1) a felonious taking of property from another, 2) by force, violence, assault, or putting in fear, and 3) being unarmed. *People v Johnson*, 206 Mich App 122, 125-126; 520 NW2d 672 (1994). The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *People v Weeder*, 469 Mich 493, 497; 674 NW2d 372 (2004). It is a fundamental principle that a clear and unambiguous statute leaves no room for judicial construction or interpretation. *People v McIntire*, 461 Mich 147, 152-153; 599 NW2d 102 (1999). "When a legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself and there is no need for judicial construction; the proper role of a court is simply to *apply* the terms of the statute to the circumstances in a particular case." *Id.* (emphasis in the original).

Defendant argues unpersuasively that the prosecution failed to present evidence sufficient to support a finding that defendant took the victim's purse by force. While the victim testified that, at first, she was unafraid because she thought that a friend was relieving her of the burden of carrying the bag, she testified unequivocally that she had her bag in her hand and felt a push and grab that removed it from her grip. Another witness testified that he saw the victim getting up from the ground after he investigated her pleas for help. This supports an inference by the jury that defendant pushed the victim down.

The statute is phrased in the disjunctive such that "assaulting" the victim or "putting her in fear" is not an essential element of unarmed robbery so long as defendant acted with force in committing the offense. See, e.g., *People v Tolliver*, 46 Mich App 34, 37-38; 207 NW2d 458 (1973). Though *Tolliver* involved a defendant who tripped and kicked the complainant, the statute does not specify levels of force required for the crime of unarmed robbery. The act of snatching a purse and knocking down the victim is a forceful act that falls under the plain meaning of the statute. The common definition of force includes "physical power or strength . . . strength exerted upon an object." *Random House Webster's College Dictionary* (2001). It took force for the victim to end up on the ground and for the bag she was holding to end up in defendant's hands.[3]

The prosecutor also presented sufficient evidence identifying defendant as the robber. The witness who pursued him noted defendant's distinctive orange hood and saw defendant's face when defendant turned around to see how far away his pursuer was. Though defendant initially eluded this witness, the witness contacted police and then later found defendant, who,

[3] We also reject defendant's argument that the evidence only supported a conviction of larceny from the person, MCL 750.357. The elements of larceny from a person are 1) an actual or constructive taking of the property, 2) a carrying away or asportation, 3) the carrying away must be with felonious intent, 4) the subject matter must be the goods or personal property of another, 5) and the taking must be without the consent and against the will of the owner. *People v Ainsworth*, 197 Mich App 321, 324; 495 NW2d 177 (1992). The element of force, which is required for unarmed robbery is therefore lacking from the definition of larceny from the person. As noted above, defendant exerted force when he committed his crime.

according to the witness, had the same orange hood and the same face, hiding in a dumpster, and the witness turned defendant over to police, identifying him as the purse snatcher. Based upon this testimony, the jury had ample basis for convicting defendant of unarmed robbery.

III. Prosecutorial Misconduct

Defendant also raises, for the first time on appeal, an unpreserved issue of prosecutorial misconduct, which is reviewed for plain error affecting defendant's substantial rights. *People v McLaughlin*, 258 Mich App 635, 645; 672 NW2d 860 (2003). Issues of prosecutorial misconduct are reviewed on a case-by-case basis. *People v Thomas*, 260 Mich App 450, 454; 678 NW2d 631 (2004). The test for prosecutorial misconduct requiring reversal of the conviction is whether defendant was denied his right to a fair and impartial trial. *People v Paquette*, 214 Mich App 336, 342; 543 NW2d 342 (1995).

Defendant says that the prosecutor improperly withheld the fact that the eyewitness viewed a photograph of defendant at a police station a few days after the alleged crime. Suppression by the prosecutor of evidence requested by and *favorable to the accused* violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecutor. *People v Banks*, 249 Mich App 247, 254-255; 642 NW2d 351 (2002), citing *Brady v Maryland*, 373 US 83, 87; 83 S Ct 1194; 10 L Ed 2d 515 (1963). However, here, defendant's due process rights were not violated because the fact that the eyewitness also saw a photograph of defendant at the police station is neither favorable to defendant nor material to the case and defendant does not explain how this evidence would have benefited his case. The eyewitness had already identified defendant in the presence of police when defendant was taken into custody. The photograph thus could have had no impact on the identification of defendant to police. Furthermore, that first identification served as an independent basis for the in-court identification by the eyewitness. And, at trial, the eyewitness pointed out defendant as the unarmed robber that he saw running away on the street and later hiding in a dumpster. There is no reasonable probability that the outcome of trial would have been different had the prosecution disclosed the existence of the photograph earlier to defendant.[4]

[4] Defendant objects to the court's admission of the photograph at trial and to the in-court identification of the eyewitness. Because defendant asserts different grounds on appeal for his objection, the issue is not preserved. MRE 103(a)(1); *People v Grant*, 445 Mich 535, 545, 553; 520 NW2d 123 (1994). Therefore, defendant must demonstrate plain error affecting a substantial right. *People v Taylor*, 252 Mich App 519, 523; 652 NW2d 526 (2002). Contrary to defendant's assertion, his identification was not based on a one-person photographic lineup. The eyewitness saw defendant multiple times on the day of the robbery – when defendant turned to look back while being pursued, and again when defendant was apprehended. As discussed, these encounters formed the basis of the identification of defendant, not an after-the-fact viewing of a photograph of defendant. The court therefore did not err in its evidentiary rulings because the admitted evidence did not unfairly prejudice defendant.

Affirmed.

/s/ Richard A. Bandstra
/s/ Henry William Saad
/s/ Donald S. Owens